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OFFICE OF PETITIONS

In re Application of : DECISION ON PETITION TO
Dietz et al. : WITHDRAW HOLDING OF
Application No. 10/672783 : ABANDONMENT
Filed: 09/26/2003 : AND DECISION ON PETITION
Attorney Docket No. 030593 : UNDER 37 CFR 1.137(b)

This is a decision on the petition filed on 11 October, 2006, which is treated as a petition to withdraw the holding of abandonment in the above-identified application. This is also a decision on the petition under 37 CFR 1.137(b) filed on 28 March, 2007.

The petition to withdraw the holding of abandonment is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

A review of the record reveals that a non-final Office action was mailed on 6 October, 2005, and set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. No reply having been received, the application appeared to be abandoned on 7 January, 2006. Notice of Abandonment was mailed on 2 May, 2006.

Petitioners assert that a reply to the non-final Office action was timely filed. In support, petitioners have supplied a copy of a transmittal letter itemizing the filing of an amendment, which contains a Certificate of Mailing dated 3 January, 2006, stating that the correspondence was deposited in first class mail, and signed by petitioners' then-current attorney of record, Karl Hormann. A copy of the amendment itself has also been supplied.

The petition filed on 11 October, 2006, further contains a statement by attorney Hormann stating that the application was "dispatched to the Patent and Trademark Office" on 3 January, 2006.

As petitioners have provided convincing evidence that a reply and extension of time was transmitted to the USPTO on 3 January, 2006, the showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

As the holding of abandonment has been withdrawn, and the application is not abandoned, the petition to revive the application is dismissed as moot.

The petition fee will be refunded.

The application is being referred to Technology Center Art Unit 1746 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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